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IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA  
CHARLESTON AREA  
MEDICAL CENTER, INC.,  
*Petitioner,*

FILED  
2008 MAY -1 PM 3:42  
CATHY S. GATSON, CLERK  
KANAWHA CO. CIRCUIT COURT

vs.

Civil Action No. 01-AA-55  
Judge Jennifer Bailey Walker

STATE TAX DEPARTMENT  
OF WEST VIRGINIA,  
*Respondent.*

**FINAL ORDER**

This matter came before the Court as an appeal from an administrative decision of the Tax Commissioner. This appeal is brought pursuant to W.Va. Code § 11-10-10.

Throughout the proceedings, Charleston Area Medical Center ("CAMC") has been represented by Charles Lorenson, Esq., and the West Virginia State Tax Commissioner ("Tax Commissioner") has been represented by Senior Assistant Attorney General Stephen Stockton.

The Court has studied the petition for appeal, the record as a whole, the memoranda of law submitted by the parties, and other pertinent legal authorities. As a result of these deliberations, for the reasons set forth in the following opinion, the Court **AFFIRMS** the administrative decision of the Tax Commissioner.

**STANDARD OF REVIEW**

The West Virginia Supreme Court of Appeals has determined that the same standard set out in the State Administrative Procedures Act shall apply to the review of decisions issued by the Tax Commissioner. *Frymier-Halloran v. Paige*, 458 S.E.2d 780 (1995). After a full record is

developed, this Court will review the findings and conclusions of the Tax Commissioner under a clearly erroneous and abuse of discretion standard unless the incorrect legal standard was applied. *Id.*

### **PROCEDURAL HISTORY**

1. By notice dated February 24, 1998, the State Tax Commissioner made an assessment of additional Provider Tax and interest in the aggregate of \$699,515 against CAMC for the period of July 1, 1994 to June 30, 1997. The amount consisted of \$537,456 in taxes and \$132,059 in interest.
2. CAMC timely filed with the State Tax Commissioner a Petition for Reassessment objecting to the assessment on numerous grounds.
3. On December 2, 1999, Nisar Kalwar, appointed administrative law judge by the State Tax Commissioner, presided over a hearing. At the hearing, the Tax Commissioner entered documents into evidence and CAMC offered two witnesses.
4. After the hearing, a briefing scheduling was established which extended until March 20, 2000.
5. By administrative decision dated March 6, 2001, the State Tax Commissioner modified the Assessment to eliminate tax periods for which the Assessment was barred due to the applicable statute of limitations. The decision sustained the Assessment for tax periods 1996 and 1997, ruling that CAMC owed additional Provider Tax in the amount of \$198,269 with interest of \$56,904.92. CAMC paid this amount in full.
6. On May 2, 2001, CAMC filed a petition with this Court seeking relief from the March 6, 2001 Administrative Order.

### **FINDINGS OF FACT**

1. CAMC is a non-profit corporation operating hospital facilities in Charleston, Kanawha County, West Virginia.
2. The defendant, State Tax Commissioner, is an appointed official of the State of West Virginia with the responsibility of, among other things, administering various state taxes, including the taxes imposed in W.Va. Code §§ 11-27-1, et seq. (collectively, the "Provider Tax").
3. During the relevant time period at issue (calendar years 1996 and 1997), CAMC operated a "self-insurance" program for its employees whereby CAMC provided certain benefits to its own employees without charge.
4. Employees who chose to participate in the self-insurance program made a contribution through payroll withholdings. The payroll withholdings were then placed into a fund administered by CAMC and used to pay covered costs incurred by CAMC employees for healthcare services provided by outside providers.
5. When an employee or retiree covered by CAMC's self-insurance program receives medical services from CAMC, CAMC's billing system records the charges associated with the activity just as if the person receiving the services was not covered by the self-insurance program.
6. Charges for the services received by participants in the self-insurance program are recorded by CAMC as accounts receivable.
7. After the charges are recorded as an account receivable, CAMC then makes an adjusting entry to remove the receivable from its books.

8. This adjusting entry reflects that no payment in cash will be forthcoming to cancel out the account receivable.

### CONCLUSIONS OF LAW

1. West Virginia imposes a series of health care provider taxes under Article 27, Chapter 11 of the West Virginia Code known as the "West Virginia Health Care Provider Tax of 1993." The Provider Tax is generally imposed on the gross receipts of certain designated classes of health care providers, including in-patient hospitals. W. Va. Code §§ 11-27-4; 11-27-7; 11-27-9; 11-27-16; and 11-27-19.
2. In each of the Provider Taxes at issue in this case, the term "gross receipts" is defined:

"Gross receipts" means the amount received or receivable, whether in cash or in kind from patients, third-party payors and others for [the taxed activity] furnished by the provider, including retroactive adjustments under reimbursement agreements with third-party payors, without any deduction for any expenses of any kind: Provided, that accrual basis providers shall be allowed to reduce gross receipts by their contractual allowance, to the extent the amount of such allowances are included therein, and by bad debts, to the extent the amount of such bad debts was previously included in gross receipts upon which the tax imposed by this section was paid. [Emphasis added]. See e.g. W.Va. Code § 11-27-9(c)(1).
3. Furthermore, for each of the Provider Taxes at issue in this case, the term "contractual allowances" is defined:

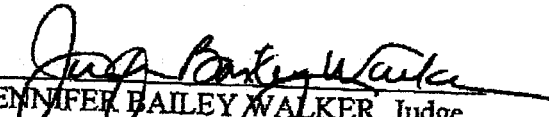
"Contractual allowances" means the difference between revenue (gross receipts) at established rates and amounts realizable from third-party payors under contractual agreements. See e.g. W.Va. Code § 11-27-9(c)(2).
4. The in kind receipt of payment that justifies removal of the account receivable, attributable to provision of services to the self-insurance plan participants, constitutes gross receipts of CAMC according to the definition of gross receipts in the Provider Tax statutes.

5. Courts have found the notion that the provision of benefits leads to a decrease in cash wages to be self-evident. *See Crull v. GEM Insurance Co.*, 58 F.3d 1386, 1390 (9<sup>th</sup> Cir. 1995); *Tony and Susan Alamo Foundation v. Secretary of Labor*, 471 U.S. 290 (1985).
6. As was stated in the Administrative Decision below, CAMC receives the services of its employees in exchange for the payments otherwise due on account of the health services provided to them. Therefore, CAMC is receiving economic value in exchange for the provision of healthcare benefits under the self-insurance plan. This economic value can be considered in kind services.
7. The gross receipts received in kind through operation of the self-insurance plan are properly included in the tax base of the Provider Taxes.
8. Because there are no third-party payors in the factual scenario of this case, there are no contractual allowances at issue, as that term is defined in the Provider Tax statutes.
9. Taxpayer is not entitled to judgment in its favor based solely on the length of time between hearing and decision. The administrative decision in this case was issued within a reasonable time, not in violation of the provisions of W. Va. Code § 11-10-9(a).

Accordingly, this Court **ORDERS**:

The Administrative Decision issued by the State Tax Commissioner is hereby **AFFIRMED** in its entirety and this matter is hereby **DISMISSED** and **STRICKEN** from the docket of this Court. Furthermore, the Circuit Clerk shall distribute certified copies of this Order to all counsel of record and the West Virginia State Tax Department. This is a final order.

Entered this 1st day of May, 2008.

  
JENNIFER BAILEY WALKER, Judge  
Thirteenth Judicial Circuit

May, 2008 2  
Cathy G. Datoom  
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